provide adequate compensation, it has undoubted jurisdiction to grant one."

The only recourse open to the plaintiffs in this case where grave and irreparable injury is proved is to cite the Attorney-General in a relator action. "The need to obtain the Attorney-General's consent to relator proceedings is the means of enabling the Attorney-General to exercise an equivalent control in the public interest over a private application for injunctions against crimes." (Lord Fraser of Tullybelton at page 521 of the same case).

In our country except in cases falling under section 80 of the Local Government Act 1976, section 8 of the Government Proceedings Ordinance 1956 applies to relator action. The provision states:—

"8. (1) In the case of a public nuisance the Attorney-General, or two or more persons having obtained the consent in writing of the Attorney-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case."

Having regard to this provision, in my view, if the plaintiffs can show that this suit is founded on public nuisance they can sue on the relation of the Attorney-General and not otherwise.

In *Majlis Perbandaran Pulau Pinang* v. *Boey Siew Than & Ors.*[2], Raja Azlan Shah, C.J. at 129 speaking on the applications of section 8 of the Government Proceedings Ordinance, 1956 and of Local Government Act 1976 (Act 171) says:—

"In our view, the section speaks so plainly that it is clear from its terms that Parliament had intended to release a local authority from the obligation to sue on a relator action and not in their own name, where they are taking proceedings at law to abate a public nuisance on public or private premises within their own area in protection of the public interest."

Upon these grounds, the plaintiffs' application is refused.

Application dismissed.

Solicitors: *Lim & Hooi; Abbas Ismail Rowland & Co.*

JAMIAH BT. HOLAM v. KOON YIN

[A.C.J. (Hashim Yeop A. Sani J.) April 8, 1982]
[Kuala Lumpur – Civil Appeal No. 86 of 1981]

Road Traffic – Motor accident – Damages – Appeal against liability and quantum – Whether trial judge erred in finding on evidence.

The plaintiff was pillion riding on PW2's motor-cycle at the time of the accident. PW2 contended that he was following a car which was travelling behind the defendant's car, all travelling in the same direction. At the junction the defendant stopped her car for other traffic and the second car swerved to the left and overtook the defendant's car and went away. The defendant then suddenly reversed her car and the accident happened. The learned Magistrate rejected PW2's version by applying the speed table calculations. He accepted the defendant's evidence *in toto* which was that she stopped her car after giving the necessary signal and then heard a collision between PW2's motor-cycle and the rear portion of her vehicle.

The plaintiff appealed against the said decision on both quantum and liability.

Held: (1) if the magistrate had not rejected outright the evidence of PW2 but had considered it in the light of all the evidence adduced before him, a finding of 50:50 liability would be justified under the circumstances. Appeal would therefore be allowed and liability was apportioned on 50:50 basis;

(2) it is an established approach for a court exercising appellate jurisdiction to adopt that in an appeal on quantum unless it can be shown to the satisfaction of the Appellate Court that the award is extremely inconsistent with the discernible trend or that the award was made on some misapprehension of facts or some erroneous assumption of law or fact, the Appellate Court should not interfere;

(3) in this case there was no evidence to show that the magistrate went beyond the limits of decided authorities in awarding general damages. The appeal against quantum was accordingly dismissed.

Cases referred to:

(1) *Abdul Mokhti bin Haji Ahmad* v. *Idris bin Ibrahim* [1977] 2 M.L.J. 85.
(2) *De Cotta* v. *Tan Hock Lee* [1972] 2 M.L.J. 173.
(3) *Samar bt. Mansor* v. *Mustafa Kamarul Ariffin* [1974] 2 M.L.J. 71.
(4) *Shari bin Abdul Rahman* v. *Attorney-General* [1979] 1 M.L.J. xxxix.
(5) *Lim Soon Poh* v. *Ng Kong Lum* [1975] 2 M.L.J. iii.

MAGISTRATE'S APPEAL.

R. K. Nathan for the appellant.
K. Ramakrishnan for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an appeal in a running down case on liability as well as quantum. The learned Magistrate had dismissed the claim of

the appellant and purporting to rely on the principle in *Abdul Mokhti bin Haji Ahmad* v. *Idris bin Ibrahim*[1] and *De Cotta* v. *Tan Hock Lee*[2] held that the driver of the motor-cycle (PW2) was wholly liable for the accident.

First, on liability. As regards the appeal on liability the version of how the accident happened as described in the testimony of PW2 in cold print would seem more probable than the version of the defendant. The problem posed here would therefore seem to be identical to that found in *Samar bt. Mansor* v. *Mustafa Kamarul Ariffin*[3]. In that case the appellant had been knocked down by a motor-cycle driven by the respondent when she was crossing the road from behind a bus. The learned trial judge dismissed her claim for damages and she appealed to the Federal Court. On appeal Suffian L.P. posed the problem as follows:

"The learned trial judge was concerned to determine who was telling the truth, but we sitting in an Appellate Court are concerned to determine not so much the truth as whether there had been error on the part of the trial judge. The issue is a simple one – was the learned trial judge in error in concluding that the defendant was not negligent?"

In the instant case the version of PW2 is that he was driving his motor-cycle (with the plaintiff riding pillion) following a car which was travelling behind the defendant's car, all travelling in the same direction. At the TPCA junction the defendant stopped her car for other traffic and the second car then swerved to the left and overtook defendant's car and went away. The defendant then suddenly reversed her car and the collision happened. According to this version therefore since the car immediately in front of PW2 had already swerved to the left and had overtaken the defendant's car, the collision should not have happened between PW2's motor-cycle and the defendant's car at that point unless as PW2 testified the defendant reversed her car suddenly and without warning to give way to some other vehicle. But this version was rejected by the magistrate. In his grounds of judgment the magistrate explained his rejection of PW2's version of the accident by applying the speed table calculations. There is no argument that the magistrate was entitled to reject the evidence of a witness after he has considered the evidence as a whole and after observing the demeanour of the witness. But it is not correct for the magistrate to reject the evidence of a witness based purely on mathematical calculations. Here the learned Magistrate rejected outright the evidence of PW2 and accepted *in toto* the defendant's evidence which was that she stopped her car after giving the necessary signal and then heard a collision between PW2's motor-cycle and the rear portion of her vehicle.

The learned Magistrate here placed the entire blame for the accident on PW2 purporting to rely on the principle in the *De Cotta* case but in *De Cotta* the facts are distinguishable because there was no dispute there that the van stopped suddenly and it was also found as a fact that the motor-cyclist was driving at an excessive speed and too close behind the van. Here all these factors are not present. PW2 was not driving fast nor too close behind defendant's car as there was another car in between them shortly before the accident.

In short, the record as it stands shows two conflicting versions of the accident. Both the vehicles were travelling on a main thoroughfare and both PW2 and the defendant had a duty of care to themselves, to one another as well as to other users of the road. If the magistrate had not rejected outright the evidence of PW2 but had considered it in the light of all the evidence adduced before him, a finding of 50/50 liability would be justified under the circumstances. Appeal was therefore allowed and liability was apportioned on 50/50 basis.

As regards the appeal on quantum it is an established approach for a court exercising appellate jurisdiction to adopt that in an appeal on quantum unless it can be shown to the satisfaction of the Appellate Court that the award is extremely inconsistent with the discernible trend or that the award was made on some misapprehension of facts or on some erroneous assumption of law or fact, the Appellate Court should not interfere. Here there was no evidence to show that the magistrate went beyond the limits of decided authorities in awarding general damages. It is obvious that the injury sustained was not as serious as in *Shari bin Abdul Rahman* v. *Attorney-General*[4]. In fact the injury sustained in this case was nearer to *Lim Soon Poh* v. *Ng Kong Lum*[5]. The appeal against quantum was accordingly dismissed. Special damages agreed at $250. The usual interest imposed. Costs to appellant.

Orders accordingly.

Solicitors: *R.K. Nathan & Co.; Tay, Tee & Co.*